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IN THE

**Supreme Court of the United States**

OCTOBER TERM, 1937

No. [REDACTED]

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UNITED STATES OF AMERICA, *Petitioner*

*v.*

ONE 1936 MODEL V-8 DE LUXE COACH, MOTOR  
No. 18-3306511, COMMERCIAL CREDIT COMPANY,  
CLAIMANT

**MEMORANDUM FOR CLAIMANT IN OPPOSITION  
TO PETITION FOR WRIT OF CERTIORARI.**

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# **In the Supreme Court of the United States**

OCTOBER TERM, 1937

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No. 815

UNITED STATES OF AMERICA, PETITIONER,

v.

ONE 1936 MODEL FORD V-8 DE LUXE COACH, MOTOR  
No. 18-3306511, COMMERCIAL CREDIT COMPANY,  
CLAIMANT

---

## **MEMORANDUM FOR CLAIMANT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.**

To the Honorable, the Chief Justice and Associate  
Justices of the Supreme Court of the United States:

Claimant, Commercial Credit Company, prays that  
the petition for writ of certiorari filed by the Petitioner  
herein be denied, and respectfully represents as follows:

### **1. Opinions Below.**

The opinion of the District Court (R. 5-13) is re-  
ported in 19 F. Supp. 470, and the opinion of the Circuit  
Court of Appeals (R. 26-28) is reported in 93 F. (2nd)  
Advance Sheets 771.

## 2. Reasons for Denying the Writ.

*First.* The Circuit Court of Appeals rightly upheld the findings of the District Court, that the evidence was sufficient to meet the statutory requirements to give the District Court exclusive jurisdiction to remit the forfeiture. The statute provides that the District Court has exclusive jurisdiction to remit or mitigate a forfeiture upon proof—

1. that Claimant has an interest in the vehicle, acquired in good faith;

2. that Claimant had at no time any knowledge or reason to believe that the vehicle was being or would be used in violation of the liquor laws;

3. that Claimant made certain prescribed inquiries before Claimant's interest arose out of a contract under which any person having a record or reputation for violating the liquor laws has a right to the vehicle. Section 204 a and b, Title 2 of the Liquor Law Repeal and Enforcement Act of August 27, 1935, C. 740, 49 Stat. 872, 878 (U. S. C. A., Supp. II, Title 27, Sec. 40a).

The District Court found as a fact that Claimant had proved all three of the above mentioned statutory conditions, and thereupon exercised its discretion to remit the forfeiture. The Circuit Court affirmed. The Petitioner concedes that Claimant proved (1) that Claimant had an interest acquired in good faith; (2) that Claimant had no knowledge that the vehicle would be used in violation of the liquor laws (page 7 of the petition); and (3) that Claimant made investigation of the record and reputation of Landrum Walker, the person who signed the contract to purchase the vehicle (page 4 of the petition). Petitioner, however, contends that Claimant did not prove—

- (a) that it had "no reason to believe" that the vehicle was being or would be used in violation of the liquor laws, as provided in (2); and
- (b) that it had investigated the person having the "right with respect to such vehicle", as provided in (3).

(a)

The lower courts were satisfied that the evidence proved that Claimant had "no reason to believe" that the vehicle was being or would be used in violation of the liquor laws. Petitioner urges that the court should have taken judicial notice that "persons dealing in automobiles and in automobile finance paper do so with full knowledge that automobiles are frequently used in violating the law" (page 7 of the petition), and that "Claimant must have known from experience that the very device by which it was deceived in this case is frequently employed by bootleggers in purchasing automobiles" (page 8 of the petition). Petitioner argues that Claimant did not prove that it had "no reason to believe" that the vehicle was being used in violation of the liquor laws, since it did not prove that it had inquired of Landrum Walker, the purchaser who signed the contract, or of the dealer, the person who sold the car and assigned the contract to Claimant, whether Landrum Walker, the person signing the contract, was the real purchaser and user of the car.

It is a matter of common knowledge that of all the automobiles in use, only an insignificant percentage thereof are used in violation of the liquor laws. It would certainly be presumptuous, therefore, to ask the court to take judicial notice that automobiles are used in violation of law, and it is unreasonable to impose upon Claimant the assumption that all of the many thousands

of automobiles financed by it are likely to be used in violation of the law. See *Wilson Motor Company v. United States* (C. C. A. 9) 84 Federal (2d) 630. The courts do not require a litigant to do a useless and unnecessary thing. Obviously, it would have been useless for the Claimant here to have made the inquiry, suggested by the Petitioner, of Landrum Walker or of the dealer. Landrum Walker and the dealer in effect answered such an inquiry when they executed the conditional sale contract for the automobile.

(b)

Landrum Walker signed the contract as purchaser. Benjamin Walker did not sign the contract and he was unknown to Claimant. Benjamin Walker was the real purchaser and Landrum Walker the nominal purchaser. So far as Claimant knew or the papers disclosed, Landrum Walker was the real and only purchaser. Claimant investigated Landrum Walker as provided in (3) and did not investigate Benjamin Walker. The lower courts held that Claimant, under these circumstances was not required to investigate Benjamin Walker and satisfied the statutory requirement when it investigated Landrum Walker. Petitioner, however, contends that the statute required the investigation of Benjamin Walker, as well as Landrum Walker, by Claimant, although Benjamin Walker was not a party to the contract, and was unknown to Claimant, because Benjamin Walker was a person having a right to the vehicle within the meaning of the statute. The statute, however, reads that if the Claimant's interest arises out of a contract "under which any person having a record or reputation \* \* \* has a right with respect to the vehicle", such person shall be investigated. The statute does not require an investigation of anyone having a right to or claiming a right to the vehicle,

but only those persons who claim a right under *the contract* out of which the interest of the Claimant arises. Landrum Walker was the purchaser named in the conditional sale contract in the case at bar. That contract was sold by the dealer to Claimant. Claimant's interest arose out of that contract. Landrum Walker was, therefore, the person the statute required to be investigated, because it was the contract on which the plaintiff bases its claim, and "under which" Landrum Walker had a right to the vehicle. Petitioner unduly stresses the words in the statute "right with respect to such vehicle" (page 9 of the petition) without reading in connection therewith the words "*contract or agreement under which any person \* \* \** has a right with respect to such vehicle." Petitioner apparently appreciates that Petitioner's technical contention "places too strict a construction upon the statute and too great a burden upon the claimant when it has no knowledge or reason to suspect that the person whose name appears in the documents before it is not the real purchaser." (pages 10-11 of petition)

*Second.* The Circuit Court of Appeals rightly approved the exercise of judicial discretion by the District Court. Petitioner does not allege in the specifications of error or in the argument that the District Court had abused its discretion or acted arbitrarily or capriciously. Accordingly, this Court should not disturb the exercise of judicial discretion by the District Court.

"..... the claimant does not have an absolute right of remission or mitigation, but does have the right then to invoke the exercise of the court's discretion. That discretion is a judicial one, as distinguished from action merely arbitrary and capricious, and so it is subject to revision, if, though

only if, it has been abused." *United States v. One 1935 Dodge Ratk-Body Truck* (C. C. A. 2) 88 Federal (2d) 613, at 615.

*Third.* The decision of this Court in this case will not be helpful to the many cases now pending before the District Courts. Since the remission or mitigation of forfeiture is discretionary with the District Courts, there will naturally be a contrariety of decisions by the District Courts. An infinite number of circumstances and facts might enter into the cases, which in some instances satisfy the court that forfeiture should be remitted or mitigated, and in other instances that remission or mitigation be denied. The courts have remitted or mitigated forfeitures in the following cases:

*United States v. One 1936 Ford Standard-C. Automobile, etc.* (D. C. W. D. Tenn.) 13 F. Supp. 104

*United States v. One 1935 Chevrolet Truck, etc.* (D. C. D. Mass.) 14 F. Supp. 777

*Wilson Motor Co. v. United States* (C. C. A. 9) 84 F. (2d) 630

*United States v. One 1935 Model Pontiac Sedan Automobile* (D. C. W. D. Ky.) 15 F. Supp. 604

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*Universal Credit Co. v. United States* (C. C. A. 6) 91 F. (2d) 388

*United States v. One 1936 Model Chevrolet Pick-Up Truck* (D. C. D. Penn.) 21 F. Supp. 165

*United States v. C. I. T. Corporation* (C. C. A. 2) 93 F. (2d) 469

The courts have refused to remit or mitigate forfeitures in the following cases:

*United States v. One 1935 Chevrolet Coupe* (D. C. D. Me. S. D.) 13 F. Supp. 986

*United States v. One 1933 Ford V-8 Coach* (D. C. E. D. Ill.) 14 F. Supp. 243

*United States v. One Plymouth Coupe, Engine No. PC 93353* (D. C. D. Md.) 14 F. Supp. 610

*United States v. One 1936 Model Lafayette C. A. etc.* (D. C. W. D. Ky.) 14 F. Supp. 1003

*C. I. T. Corporation v. United States* (C. C. A. 4) 86 F. (2d) 311

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*United States v. One Ford V-8 Truck* (D. C. D. Wyo.) 17 F. Supp. 439

*Federal Motor Finance v. United States*, 88 F. (2d) 90

*United States v. One Dodge Rack-Body Truck* (C. C. A. 2) 88 F. (2d) 613

*United States v. One Chevrolet Sedan* (D. C. E. D. Pa.) 18 F. Supp. 799

*United States v. One Chrysler Sedan* (D. C. M. D. Pa.) 18 F. Supp. 684

*United States v. One Ford Coach Automobile* (W. D. Va.) 20 F. Supp. 44

*United States v. One 1936 Model Ford C. Automobile* (D. C. W. D. So. Car.) 20 F. Supp. 607

*United States v. One Ford Coupe, Pa. License 831-H-5* (D. C. D. Delaware) 21 F. Supp. 156

*United States v. One 1936 Studebaker Sedan, etc.* (D. C. W. D. Washington, N. D.) 21 F. Supp. 499

### 3. Conclusion

The petition for certiorari should be denied, and the decision below should be allowed to stand. The decision of the District Court was reached after due consideration of all the circumstances in the exercise of its exclusive jurisdiction, and there is nothing in the record to indicate that the Court abused its power or that its action was arbitrary or capricious.

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March 23, 1938.

